IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 1186 of 2005

For Approval and Signature:

HONOURABLE MR.JUSTICE K.A.PUJ

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1	Whether Reporters of Local Papers may be allowed to see the judgment ?
2	To be referred to the Reporter or not ?
3	Whether their Lordships wish to see the fair copy of the judgment ?
4	Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?
5	Whether it is to be circulated to the civil judge ?

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KISHANJI MAGANJI THAKOR - Petitioner
Versus
HEIRS & LEGAL REPRESENT. DECEASED
NARAYANDAS G DAVANI & 2 - Respondents

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Appearance :
MR DAKSHESH MEHTA for Petitioner.
MR VG DAVE FOR MR YOGESH S LAKHANI for Respondents.

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CORAM :	HONOURABLE MR.JUSTICE K.A.PUJ

Date : 11/06/2007
ORAL JUDGMENT

1. The petitioner – original plaintiff has filed this petition under Article 227 of the Constitution of India challenging the order dated 11.01.2005 passed by the learned Joint Civil Judge (S.D.), Vadodara below application Exh. 10 in Special Civil Suit No. 409 of 2004 whereby the learned Trial Judge has granted unconditional leave to defend the suit to the respondents / original defendants.

2. The petition was admitted by this Court on 31.01.2005.

3. After having heard Mr. Dakshesh Mehta, learned advocate appearing for the petitioner and Mr. V. J. Dave, learned advocate appearing for Mr. Yogesh Lakhani for the respondents, and after having perused the impugned order, the Court is of the view that the order passed by the learned Trial Judge is a

discretionary one and considering the facts of the case and triable issues involved in the suit, unconditional leave was granted. It is settled position in law that if triable issues are raised and defence is not sham or moonshine, unconditional leave is required to be granted. The interest of justice would better be served if the present petition is disposed of by directing the Trial Court to expedite the hearing of the suit. Hence, the Court, without going into the merits of the matter and without expressing any opinion on the issues raised in the suit, directs the Trial Court to dispose of Special Civil Suit No. 409 of 2004 as expeditiously as possible, preferably within a period of six months from the date of receipt of writ or from the date of receipt of certified copy of this order, whichever is earlier. Needless to state that the learned Trial Judge will rest his decision on the evidence that may be led before him by both the parties and will not be influenced by the impugned order as well as this order.

4. This petition is accordingly disposed of. Rule is discharged without any order as to costs.

[K. A. PUJ, J.]

Savariya